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BEFORE THE ARIZONA CORPORATION (

Arizona Corporation Commission

COMMISSIONERS

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BOB STUMP, Chairman

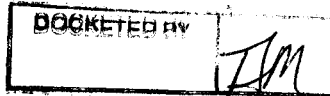
MAY 08 2013

AZ CORP COMMISSION

GARY PIERCE

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BRENDA BURNS



BOB BURNS

2013 MAY 8 PM 2 39

SUSAN BITTER SMITH

IN THE MATTER OF THE FORMAL
COMPLAINT OF SWING FIRST GOLF LLC
AGAINST JOHNSON UTILITIES LLC

DOCKET NO. WS-02987A-13-0053

SUPPLEMENT TO COMPLAINT

Swing First Golf LLC ("Swing First") hereby supplements its Complaint against Johnson Utilities LLC, dba Johnson Utilities Company ("Utility") to provide additional information concerning a recent threatening e-mail from Utility. The e-mail clearly establishes that Utility does not intend to honor its responsibility to deliver sufficient Effluent to satisfy Swing First's irrigation requirements. Further, the e-mail shows that Utility is using the threat of withholding Effluent deliveries to try to extort huge additional payments from Swing First.

I Discussion

Swing First has been able to irrigate the golf course solely with Effluent, but it has been a very close call in recent years. Effluent is delivered into a small golf course lake on the 18th hole, Swing First's signature hole. From there, Swing First pumps the effluent through its irrigation system. Because of Utility's imposed rationing, lake levels have often been reduced to critical levels. At these low levels, fish are endangered, the lake begins to stink and lose its scenic qualities, and the irrigation pumps suck up dirt and gravel.

Exhibit A is a copy of an e-mail from Utility's Kenny Watkins, responding to an urgent request from Swing First to provide sufficient Effluent—up to 700,000 gallons per day—to keep turf from dying and to keep the golf course lake at a level high enough not to damage the irrigation system. The e-mail demonstrates that Utility has no intention of providing the

1 requested Effluent. “[W]e simply cannot commit to deliver 700,000 gallons per day of effluent
2 to the golf course.”

3 A catastrophe is looming. If Utility will not provide sufficient Effluent, turf will die.
4 Without sufficient Effluent, fish will die and the irrigation system will be damaged. The
5 resulting expenses will be significant. Further, revenues will decline as golfers instead play on
6 more attractive courses. Utility well knows these consequences, but simply does not care. This
7 is just additional evidence that since 2006 Utility has been engaged in an all-fronts campaign to
8 drive Swing First out of business.

9 In its Complaint, Swing First established that the so-called Effluent shortage is entirely
10 manufactured by Utility. Swing First long expected to receive Effluent from Utility once its
11 Santan Wastewater Treatment Plant was completed. Swing First caused the necessary facilities
12 to be constructed to allow it to receive Effluent. Swing First paid for Utility to install a three-
13 inch meter to measure deliveries. And once the new treatment plant was completed, Utility
14 started delivering large quantities of Effluent.

15 Unfortunately, in 2007, Utility turned the Effluent tap off almost entirely and forced
16 Swing First to instead take more expensive CAP Water (at five times the lawful rate). Only the
17 Commission’s intercession forced Utility to resumed Effluent deliveries. However, by then
18 Utility had added a new Effluent customer, the San Tan Heights Homeowners Association
19 (which it charged six times the lawful rate). This is the basis of the excuse that Utility is now
20 using to restrict Swing First’s Effluent deliveries. “Well gosh, we have to be fair to both
21 customers.”¹

22 This is a completely phony excuse. Utility created this problem and now it wants its
23 customers to pay for its problem. Utility’s e-mail is extraordinarily misleading. Yes, Utility
24 offers other types of water, but fails to mention that their rates are significantly higher than the
25 Effluent rate.² Utility also fails to mention that Swing First would also have to pay additional

¹ As if Utility cared about being fair to its customers.

² The CAP Water rate is \$0.84 per thousand gallons if available versus \$0.63 per thousand gallons for Effluent. The non-potable water rate is \$2.35 per thousand gallons, including the CAGR charge.

1 monthly bill charges if it wanted to receive CAP Water or non-potable water. Further, Utility
2 likely cannot supply significant quantities of CAP Water. Just seven months ago, the
3 Commission approved Utility's new \$2.35 per thousand gallon non-potable water rate.³ The
4 Commission noted, based on Utility's representations: "The Company has already taken its
5 entire excess non-potable CAP water allotment for the year and the CAP has advised the
6 Company that it will no longer offer excess CAP water for sale after December 31, 2012."⁴
7 Finally, Utility fails to mention that it is not even authorized to supply its non-potable water
8 service to new customers without Commission approval.⁵

9 Utility's alternative would amount to a major rate increase for Swing First. Because
10 Utility cannot assure that it can provide CAP Water (based on what it has told the
11 Commission), we can reasonably assume that all additional deliveries will be at the new
12 \$2.35 per thousand gallon non-potable water rate. If Utility supplies up to 250,000 gallons
13 per day from this source instead of Effluent for the months of May through October, Swing
14 First's additional cost would be \$84,860, calculated as follows:

(a)	(b)	(c)
<u>Incremental volumetric charge</u> (\$2.35 – 0.63 = \$1.72/1000 gallons)	<u>Non-potable deliveries</u> (182 days x 250,000 gallons = 45,500,000)	<u>Excess Volumetric Charges</u> (Col. a x Col. b) \$78,260
Additional Monthly "Minimum" Charge of \$550 per month	Charged for 12 months	<u>Additional Yearly Meter Fee</u> \$6,600
<i>Total Additional Charges to Swing First</i>		<i>\$84,860</i>

15 This is extortion, pure and simple. Through its threats to withhold effluent, Utility is
16 trying to force Swing First to sign up for new water service at four times the rate for its present
17 service. This would double Swing First's annual water bills. Swing First's alternative would be

³ Decision No. 71352, dated October 4, 2012.

⁴ *Id.* at page 2.

⁵ *Id.* at page 4.

1 dead grass and fish, an empty parking lot, and damaged irrigation equipment. The Commission
2 cannot allow this naked extortion.

3 **II Utility's Motion to Dismiss**

4 Utility's latest threats demonstrate further that there is a present case and controversy that
5 must be resolved by the Commission. Utility is a repeat offender and cannot hide its present
6 extortion behind *res judicata*.

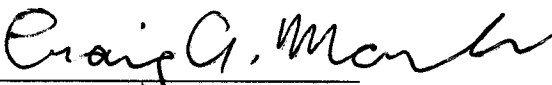
7 **III Utility's Petition to Amend Rate Decision**

8 Utility's latest malfeasance is further evidence why the Commission should not grant
9 Utility's request to further amend Decision No. 71854. Only two of the present Commissioner
10 were members of the Commission that unanimously imposed draconian penalties on Utility as a
11 result of its numerous prior acts of misfeasance and malfeasance. The record in that case clearly
12 supported the Commission's action. After Utility cranked up its public relations campaign to try
13 to show that it had turned over a new leaf, the Commission took much of the sting out of
14 Decision No. 71854, when it issued Decision No. 72759. Now, Utility wants even further relief.
15 However, Utility's latest malfeasance is additional evidence—above that provided by Swing
16 First in its April 19, 2013, Response to Petition to Amend Decision in Docket No. WS-02987A-
17 08-0180—that Utility has not reformed. The Commission should not act on Utility's Petition
18 until Utility can demonstrate real reform by resolving its present issues with Swing First without
19 even more endless, costly litigation.

20 **IV Requested Relief**

21 Swing First renews its request that the Commission prevent Utility's extortion and Order
22 Utility to deliver Effluent in quantities sufficient to satisfy Swing First's irrigation needs for its
23 Johnson Ranch Golf Course.

1 RESPECTFULLY SUBMITTED on May 8, 2013.
2
3

4 
5 _____
6 Craig A. Marks
7 Craig A. Marks, PLC
8 10645 N. Tatum Blvd., Ste. 200-676
9 Phoenix, Arizona 85028
10 (480) 367-1956 (Direct)
11 (480) 304-4821 (Fax)
12 Craig.Marks@azbar.org
13 Attorney for Swing First Golf LLC

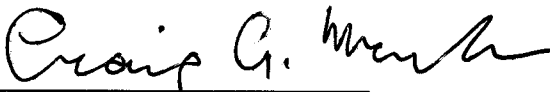
14 Original and 13 copies **filed**
15 on May 8, 2013, with:

16
17 Docket Control
18 Arizona Corporation Commission
19 1200 West Washington
20 Phoenix, Arizona 85007
21

22 Copy **e-mailed and mailed**
23 on May 8, 2013 to:

24
25 Jeffery W. Crockett
26 Brownstein Hyatt Farber Schreck
27 40 North Central, 14th Floor
28 Phoenix, AZ 85004
29

30
31 By:

32 

Craig A. Marks

Exhibit A

Begin forwarded message:

From: "Kenny Watkins" <kwatkins@johnsonutilities.com>
Date: May 3, 2013, 3:48:39 PM MST
To: "Timothy West" <timothy.west@yahoo.com>
Cc: "Jeff Lundgren" <jeff.lundgren@gmail.com>
Subject: RE: Effluent Meter

Tim,

You state that in order to properly water the Johnson Ranch golf course during the month of May, you will need 700,000 gallons per day of effluent, and that you would love to get even more effluent. As you know, Johnson Utilities can deliver as much water as Swing First Golf requests using a combination of effluent, Central Arizona Project water, and if necessary, non-potable groundwater. Therefore, we can certainly deliver 700,000 gallons of water or more per day if SFG requests. I understand your desire to receive effluent because it is cheaper water compared to the other sources. However, with the variability of the influent flow rates at the San Tan wastewater treatment plant, capacity constraints on the delivery of effluent through the existing pipeline to the golf course, and the competing demand for effluent from Johnson Utilities' other residential effluent customer, we simply cannot commit to deliver 700,000 gallons per day of effluent to the golf course. That being said, we will continue to work to deliver as much effluent as we can on a daily basis given the constraining factors listed above. We can also deliver additional quantities of CAP water that SFG may reasonably request at the current rate of \$0.84 per thousand gallons plus applicable taxes. In addition, we have a newly approved tariff for non-potable water service where we can deliver non-potable groundwater at a rate of \$0.84 per thousand gallons plus applicable taxes, including a Central Arizona Groundwater Replenishment District Charge of \$1.51 per thousand gallons.

As you know, the CAP delivery line and meter are in place, and Johnson Utilities can immediately deliver CAP water to the golf course in whatever quantities you request. In fact, Swing First Golf has always had the ability to receive CAP water from Johnson Utilities. Therefore, Johnson Utilities is not responsible for the low water level in the golf course lake, stuck sprinkler heads or other irrigation problems, the decision by SFG to cut back on its normal watering schedule, turf loss, re-sodding, or problems with over-seeding or a transition from rye grass back to the Bermuda base. These issues have arisen (to the extent they have arisen) solely as a result of SFG's decision to water the golf course using only effluent.

Again, we understand your desire to receive as much effluent as possible, and we will continue to work to deliver as much effluent as we can on a daily basis given the constraining factors listed above. If SFG requires additional water, we can deliver as much CAP or as a backup non-potable irrigation water as you request. Please confirm in writing your request that Johnson Utilities supplement the delivery of effluent with the delivery of CAP water at the tariffed rate. If SFG refuses to accept CAP water and insists on using only effluent, then Johnson Utilities is not responsible for any damage to the golf course or the irrigation system that is caused by your decision.

I am available any time to discuss any additional questions which you may have.

Thank you,
Kenny Watkins

From: Timothy West [<mailto:timothy.west@yahoo.com>]
Sent: Wednesday, May 01, 2013 11:23 AM
To: kwatkins@johnsonutilities.com
Cc: Jeff Lundgren
Subject: Effluent Meter

Kenny,

We have been cutting back on watering the golf course for the past couple weeks in order to try to help raise our lake level. As you know, the lower our lake goes, the more stuck heads and irrigation problems we have. We had to cut back on our normal watering schedule because last month we received the least amount of water we ever have in April. An average of 372,500 gallons went into the lake per day. Now that we are heading into May and the temperature begins to rise, I wanted to let you know how much effluent water we will need on a daily basis this month in order to meet our minimum watering requirements to at least minimize the amount of turf loss. The last three years you have sent us an average of 545,000 gallons per day in May. We have had to manage turf loss because this amount is simply not enough. I need 700,000 gallons per day to keep the turf we have and to properly water the golf course in May. This is the actual minimum amount of water to keep most of our grass alive. 700,000 gallons per day of effluent allows me to properly water the golf course in May and minimize the amount of irrigation issues associated with having a low lake level. Receiving less than 545,000 gallons per day will cause us to lose so much of our bermuda base that we will have to pay to resod large parts of the golf course as well as cause us problems and additional costs associated with this years overseed. In order to properly water the golf course, I need 700,000 gallons per day of effluent. I would love to get more but 700,000 allows us to at least keep what grass we do have alive. This is especially important in order to have control over our transition from rye grass back to our bermuda base this May and June. So I am requesting that we receive 700,000 gallons per day of effluent for the month of May.

Thank you,

Timothy S. West GCS
The Golf Club at Johnson Ranch